Jurisdictional Statement

Case No. **81-5943**

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1981

CHARLES H. BIXBY,

Appellant,

vs.

PHILIP ROSS, as Industrial Commissioner,
Respondent,

Appellee.

On Appeal From The New York Supreme Court;
On Writ of Certiorari

JURISDICTIONAL STATEMENT

Charles H. Bixby
5489 West Henrietta Road
P.O. Box 116
West Henrietta, New York
14586-0116
(716) 334-5753
Plaintiff Pro Se

Question Presented

DID THE SUPREME COURT OF NEW YORK ERR AS A MATTER OF LAW IN HOLDING THAT THE CLAIMANT-APPELLANT WAS INELIGIBLE TO RECEIVE BENEFITS EFFECTIVE OCTOBER 1, 1979 BECAUSE HE DID NOT FILE A VALID ORIGINAL CLAIM IN THAT HIS EARNINGS IN HIS BASE PERIOD WERE IN EMPLOYMENT EXCLUDED UNDER THE UNEMPLOYMENT INSURANCE LAW AND IN HOLDING THAT THE PROVISIONS OF THIS LAW AND ITS ENFORCEMENT PRACTICES AS PROVIDED TO THE CLAIMANT-APPELLANT WERE CONSTITUTIONAL AND DID NOT DISCRIMINATE AGAINST APPELLANT ON THE BASIS OF RELIGION UNDER THE FIRST AMENDMENT NOR VIOLATE HIS RIGHTS UNDER THE FIFTH AMENDMENT AND UNDER THE FOURTEENTH AMENDMENT?

Parties To The Proceeding

CHARLES H. BIXBY, Appellant,

vs.

PHILIP ROSS, as Industrial Commissioner, Respondent Appellee.

Other parties listed as members in earlier documents of this case are:

NYS Dep't of Labor
Local Office #51
111 Clinton Ave. No.
Rochester, NY 14604

Fairport Baptist Home
4646 Nine Mile Point Rd.
Fairport, NY 14450

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Opinion Below

The Administrative Law Judge, New York State Department of Labor Unemployment Insurance Referee Section, after a hearing December 3, 1979 at which appellant was unable to secure legal counsel and reported so at the hearing, filed a decision December 5, 1979 sustaining the initial determination of the local office holding the claimant-appellant ineligible to receive benefits effective October 1, 1979 because he did not file a valid original claim in that his earnings in his base period were in employment excluded under the Unemployment Insurance Law, said decision attached hereto as Appendix 6. The New York State Department of Labor Unemployment Insurance Appeal Board sustained the judgment of the Administrative Law Judge in a decision filed in the Department of Labor on March 12, 1980 and attached hereto as Appendix 5. The Appellate Division of the Supreme Court, Third Department in an order entered in the office of the Clerk on July 15, 1981 affirmed the decision of the Board, notice of said decision attached hereto as Appendix 4. Appellant's request for a rehearing dated August 12, 1981 is attached hereto as Appendix 3. Said request for rehearing was denied September 25, 1981, and notice of this is attached hereto as Appendix 2.

Jurisdiction

The jurisdiction of this Court is evoked 28 U.S.C. section 1257(2).

The judgment of the New York Supreme Court was entered on July 15, 1981, rehearing denied September 25, 1981.

The notice of appeal was filed on December 18, 1981, in the New York Supreme Court and is attached hereto as Appendix 1.

Statute Involved

The statute involved is New York State Labor Law Article 18, Section 563 Non-profit organizations, sub-section 2 Exclusions, which states:

> 2. Exclusions. In addition to services not included pursuant to the provisions of section five hundred eleven, the term 'employment' does not include services rendered for a non-profit organization by
> (e) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, by a member of a religious order in the exercise of duties required by such order,

However, also involved but not mentioned by the appellee in the decisions is Labor Law Article 18, Section 561 Voluntary election in which professional persons in non-profit organizations may be covered:

> 561. Voluntary election
> 1. Employer. Any employer not otherwise liable for contributions under this article as an employer may become liable therefor

Voluntary election is interpreted by 62 NY Jur 47 where under Section 48 it is stated:

> 48 Election of limited coverage.
> Any employer not otherwise liable for contributions under the Unemployment Insurance Law, who operates a building, may elect to become liable therefor, but may limit his election exclusively to employees engaged in the maintenance of a specified building. Any employer not otherwise liable for contributions may elect to become liable therefor, but may exclude therefrom employees in one or more of the following groups or classes of employees: (a) executive; (b) administrative; (c) professional; (d) teachers; (e) recipient of charitable aid from the employer, who performs work incidental to or in return for the aid and not under any express contract of hire; (f) volunteers; (g) students; (h) spouses of students; and (i) a duly ordained, commissioned, or licensed minister, priest, or rabbi, or a Christian Science reader, sexton, or member of religious order.

Statement of the Case

This is an unemployment insurance case involving the validity of Article 18 of the N.Y. State Labor Law (Unemployment Insurance Law) and the way it has been interpreted and enforced in appellant's situation.

On July 29, 1979, appellant was informed that he would be terminated by his employer, Fairport Baptist Home,(a non-profit religious health care organization) on or before the end of September 1979. Appellant's employer also informed him that if appellant accepted this as a termination that appellant would be eligible to receive unemployment insurance benefits.

On October 1, 1979, appellant applied for unemployment benefits at the local offices of the N.Y. State Department of Labor. The local office shortly informed appellant that he was not elgible to receive unemployment compensation and a hearing was held on this matter at appellant's request on December 3, 1979 before an Administrative Law Judge of the N.Y.State Department of Labor. The judge denied appellant compensation and appellant appealed this decision to the Department of Labor Appeal Board.

The decision of the Administrative Law Judge was affirmed by the Board in a notice mailed and filed in the Department of Labor on March 12, 1980. Appellant appealed this decision of the Board to the Appellate Division of the New York State Supreme Court, Third Department on March 22, 1980.

On July 15, 1981, an order was entered in the office of the Clerk of the Appellate Division of the Supreme Court, Third Department affirming the decision of the Board. Appellant appealed this decision and sought another hearing in a motion to the Appellate Division of the Supreme Court, Third Department.

On September 25, 1981 appellant's motion for permission to appeal to the Court of Appeals was denied.

option of N.Y. State Law to provide unemployment benefits to appellant, then the N.Y.State Supreme Court should have overruled the action of the N.Y.State Department of Labor. The Court has not done so.

The question now becomes that of the clearness, fairness and constitutionality of the New York State Law when it needlessly excludes a duly ordained minister in the exercise of his ministry when both employer and employee wish to have unemployment insurance benefits provided.

This question appears to be a first impression for the law in this matter. The closest comparable action is Von Stauffenberg v. District Unemployment Compensation Board, 459 Federal Reporter, 2d 1128f. However, appellant's case is significantly different from this case where the non-profit organization employer did not elect unemployment insurance coverage for the employee.

The pattern for ministers being able to receive old age assistance benefits from the Social Security system has already been established in practice when it is done as a voluntary action.

Appellant argues that federal precident thus exists for claimant to receive unemployment insurance benefits through the Unemployment Insurance Law which has been liberally interpreted as a resource to be extended as fully as possible.

Appellant further reasons that for N.Y.State Law to deny unemployment insurance coverage to appellant when it is sought by employer, employee and the basic thrust of the social legislation is discriminatory against religion, a denial of the first amendment, the fifth amendment and the fourteenth amendment of the constitution. The fourteenth amendment could not be applied in Von Stauffenberg v. District Unemployment Compensation Board, 459 Federal Reporter, 2d 1128 but can in appellant's situation.

Appellant recognizes the validity of the Labor Law on unemployment insurance in so far as it seeks to prevent the state from forcing unemployment responsibilities upon religious and non-profit institutions but the other hazard of this separation of church and state concern should also be respected. That is, the state should not destroy the economic value of religious service nor needlessly prevent active participants in religious institutions from enjoying the property, benefits and responsibilities of citizenship which would otherwise be theirs should they choose to give and to receive them.

Conclusion

New York State Labor Law Article 18 should be ruled unconstitutional in so far as it needlessly discriminates against ministers and members of religious orders in dening them rights which are extended to other citizen employees and even to some non-citizen employees. Appellant seeks to receive the property, benefits and responsibilities that are rightfully his as a citizen of the United States of America.

IN THE SUPREME COURT OF THE STATE OF NEW YORK

CHARLES H. BIXBY, Appellant,

vs. No. 39938

PHILIP ROSS, as Industrial Commissioner, Respondent Appellee.

NOTICE OF APPEAL

Notice is hereby given that claimant-appellant, Charles H. Bixby, appeals from the judgment of this Court rendered on July 15, 1981, rehearing denied September 25, 1981, to the Supreme Court of the United States.

The appeal hereby taken is directly to the Supreme Court pursuant to 28 United States Code section 1257(2).

CHARLES H. BIXBY

By: Charles H. Bixby

CHARLES H. BIXBY
5489 West Henrietta Road
P.O. Box 116
West Henrietta, New York
14586-0116
(716) 334-5353
Plaintiff Pro Se

81-5943

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Notice of Appeal was mailed, postage prepaid, by United States mail to Robert Abrams, Esq., Attorney General of the State of New York, Attorney for the Industrial Commissioner, Respondent, Room 71-29, Two World Trade Center, New York, New York 10047, on this 21st day of December, 1981.

Charles H. Bixby

CHARLES H. BIXBY

IN THE SUPREME COURT OF THE STATE OF NEW YORK

CHARLES H. BIXBY, Appellant,

vs. No. 39938

PHILIP ROSS, as Industrial Commissioner, Respondent Appellee.

NOTICE OF APPEAL

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CHARLES H. BIXBY

By: Charles H. Bixby

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5489 West Henrietta Road
P.O. Box 116
West Henrietta, New York
14586-0116
(716) 334-5353
Plaintiff Pro Se

RECEIVED
'81 DEC 18 PM 4:45
SUPREME COURT
CLERK'S OFFICE

IN THE SUPREME COURT OF THE STATE OF NEW YORK

and

IN THE APPELLATE DIVISION OF THE SUPREME COURT, FOURTH JUDICIAL DEPARTMENT

Pre-argument statement as required by 22NYCRR 1000.12

Title of Action:

CHARLES H. BIXBY, Appellant,

vs. No. 39938

PHILIP ROSS, as Industrial Commissioner, Respondent Appellee.

Full names of original parties and any change in the parties:

Charles H. Bixby
5489 West Henrietta Road
West Henrietta, New York 14586

New York State Department of Labor
Local Office #51
111 Clinton Avenue North
Rochester, New York 14604

Fairport Baptist Home
4646 Nine Mile Point Road
Fairport, New York 14450

Name, address and telephone number of counsel for appellant or petitioner:

Charles H. Bixby
5489 West Henrietta Road
West Henrietta, New York 14586
(716) 334-5353
Appellant Pro Se

Name, address and telephone number of counsel for respondent:

ROBERT ABRAMS
Attorney General of the State of New York
Attorney for the Industrial Commissioner, Respondent
Room 71-29
Two World Trade Center
New York, New York 10047
(212) 488-5447

Court and county, or administrative body, from which appeal is taken:

State of New York Supreme Court Appellate Division Third Judicial Department, Justice Building, Albany County

State whether appeal is from an order or a final judgment, and the date of entry thereof:

The Appellate Division of the Supreme Court, Third Department in an order entered in the office of the Clerk on July 15, 1981 affirmed the decision of the New York State Department of Labor Unemployment Insurance Appeal Board and Appellant's request for a rehearing dated August 12, 1981 was denied September 25, 1981.

State whether there is any related action or proceeding now pending in any court of this or any other jurisdiction, and if so, the status of any such case:

CHARLES H. BIXBY vs. NEW YORK STATE DEPARTMENT OF LABOR, Case No. 6-P-D-80-69856 Division of Human Rights, State of New York

This case is in appeal from a finding of lack of jurisdiction. Complainant has received no decision yet from a hearing held on this in the Hall of Justice, Monroe County on July 22, 1981.

State the nature and object of the cause of action or special proceeding (contract, personal services, sale of goods, etc; tort - personal injury, automobile, sidewalk accident, etc.; equity, specific performance, injunction, etc.):

Unlawful discriminatory practice relating to employment because of complainant's disability which is related to the toxic components of tobacco smoke.

State as briefly as possible the result reached in the court or administrative body below:

This case is in appeal with no decision.

State as briefly as possible the grounds for seeking reversal, annulment or modification:

Loss of employment and unemployment resources because the offices of the New York State Department of Labor have continued to be smoke-filled and therefore unavailable to me.

State whether there is any related action or proceeding now pending in any court of this or any other jurisdiction, and if so, the status of any such case:

CHARLES H. BIXBY vs. COUNTY OF MONROE, Case No. 6-E-D-80-69456 Division of Human Rights, State of New York

This case is in appeal from a finding of lack of jurisdiction. Complainant has received no decision yet from a hearing held on this in the Hall of Justice, Monroe County on July 22, 1981.

State the nature and object of the cause of action or special proceeding (contract, personal services, sale of goods, etc; tort - personal injury, automobile, sidewalk accident, etc.; equity, specific performance, injunction, etc.):

Unlawful discriminatory practice relating to employment because of complainant's disability which is related to the toxic components of tobacco smoke.

State as briefly as possible the result reached in the court or administrative body below:

This case is in appeal with no decision.

State as briefly as possible the grounds for seeking reversal, annulment or modification:

Recent loss of employment as a legal messenger in a law firm - and loss of other employment resources because of continuing problems with smoke-filled elevators and other public facilities in which the County Health laws have been inadequately enforced.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal and pre-arguement statement as required by 22 NYCRR 1000.12 was mailed, postage prepaid, by United States mail to Robert Abrams, Esq., Attorney General of the State of New York, Attorney for the Industrial Commissioner, Respondent, Room 71-29, Two World Trade Center, New York, New York 10047, and New York State Department of Labor, Local Office #51, 111 Clinton Avenue North, Rochester, New York 14604 and Fairport Baptist Home, 4646 Nine Mile Point Road, Fairport, New York 14450, and State of New York Executive Dept., Division of Human Rights, Executive Office Building, Suite 323, 36 West Main Street, Rochester, New York 14614 and Joseph C. Pilato, Esq., Deputy County Attorney, County of Monroe, 307 County Office Building, 39 W. Main Street, Rochester, New York 14614 and Freddrick J. Hmiel, Esq., Senior Attorney, New York State Department of Labor, State Office Building Campus, Albany, New York 12240 and Harter, Secrest and Emery, 625 Midtown Tower, Rochester, New York 14604 on this 19th day of December, 1981.

Charles H. Bixby

CHARLES H. BIXBY

Appellant questions the constitutionality of "New Appellate Division Rule" 22NYCRR 1000.12.

Appellant was unaware of said Rule until informed of it by staff at the Monroe County Clerk's Office when he went to file his Appeal on the morning of December 18, 1980. The Clerk's office staff would not process his Appeal without the additional papers required by 22NYCRR 1000.12. This has delayed the filing of the Appeal and may have effected its timeliness.

Furthermore, said Rule necessitates drawing other parties into the case at the point where appellant is trying to simplify the issues.

Appellant also wonders if the conference required by said Rule may obstruct due process of law by compromising his rights and the issues.

Appellant raised the question of the constitutionality of said Rule with the staff of the County Clerk's Office when the Appeal was filed at 4:45 P.M. on December 18, 1981.

Appellant appreciates the stated intent of said Rule but believes these questions should be resolved.

Charles H. Bixby

CHARLES H. BIXBY

New Appellate Division Rule

The Justices of the Appellate Division of the Supreme Court, Fourth Judicial Department, in order to expedite civil appeals under the Pre-argument Conference Program, do hereby amend Part 1000 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York, effective April 1, 1981 by adding thereto a new section to be known and designated as 22 NYCRR 1000.12, as follows:

§1000.12 Pre-argument Conference

(a) In every civil case in which after April 1, 1981 a notice of appeal to the Appellate Division is filed, or an order granting leave to appeal is entered, or an order is entered transferring an article 78 proceeding to the Appellate Division, counsel for the appellant or petitioner, as the case may be, shall file with the notice of appeal or order a pre-argument statement in the following form:

Title of the action.

Full names of original parties and any change in the parties.

Name, address and telephone number of counsel for appellant or petitioner.

Name, address and telephone number of counsel for respondent.

Court and county, or administrative body, from which appeal is taken.

State whether appeal is from an order or a final judgment, and the date of entry thereof.

State whether there is any related action or proceeding now pending in any court of this or any other jurisdiction, and if so, the status of any such case.

State the nature and object of the cause of action or special proceeding (contract, personal services, sale of goods, etc; tort — personal injury, automobile, sidewalk accident, etc.; equity, specific performance, injunction, etc.).

State as briefly as possible the result reached in the court or administrative body below.

State as briefly as possible the grounds for seeking reversal, annulment or modification.

(b) Within five days after filing such pre-argument statement, the appellant shall serve a copy thereof upon each other party. Any other party may then file a counter-statement, if so advised.

(c) The County Clerk, Family Court Clerk or Surrogate's Court Clerk with whom such statement is filed, shall promptly transmit the statement to the Appellate Division.

(d) In any case in which the judicial administrative officer or such other person as may be designated by the Appellate Division deems it appropriate, a notice will be sent directing the attorneys to appear and attend a pre-trial conference to consider the possibility of settlement, simplification of the issues, limitation of the record, and other matters which may aid in the disposition of the appeal.

(e) In the event that the judicial administrative officer or other duly designated person has not scheduled a pre-argument conference within 30 days after the filing of the statement as provided herein, any party to the appeal or proceeding may apply to him within 10 days thereafter to have such a conference.

(f) In any appeal pending in this court and not placed on the calendar for argument or submission, which appeal was instituted prior to April 1, 1981 the appellant may submit a pre-argument statement and request a pre-argument conference.

(g) After the conclusion of the conference, if the parties have agreed upon a settlement or other matter, an order of approval shall be noted by the judicial administrative officer or designated person upon the stipulation of the parties, and such order will be entered when approved by a justice of this court.

(h) Any party who without good cause shown, fails to file a pre-argument statement or who fails to appear for a regularly scheduled pre-argument conference or who fails to abide by the terms of a stipulation or order entered following a pre-argument conference, shall be subject to such sanctions as the court may direct, which may include dismissal of the appeal.

(i) The pre-argument statement may later be attached to the record, appendix, or brief as the case may be in lieu of the statement prescribed by CPLR 5531.

(j) This program shall run for one year from the effective date herein unless extended by order of the court.

DATED: January 12, 1981

FOR THE COURT

/s/MICHAEL F. DILLON
Presiding Justice

DECISION

STATE OF NEW YORK

Supreme Court

Appellate Division
Third Judicial Department

JUSTICE BUILDING

ALBANY

HON. A. FRANKLIN MAHONEY

Presiding Justice

HON. MICHAEL E. SWEENEY
HON. T. PAUL KANE
HON. ROBERT G. MAIN
HON. JOHN T. CASEY
HON. ANN T. MIKOLL
HON. PAUL J. YESAWICH, JR.
HON. LEONARD A. WEISS
HON. J. CLARENCE HERLIHY

Associate Justices

JOHN J. O'BRIEN

CLERK

September 25, 1981

39170 - In the Matter of the Claim of EDWARD J. GALVIN, Appellant.
PHILIP ROSS, as Industrial Commissioner, Respondent.

Motion for extension of time to perfect appeal granted, and time extended to October 11, 1981.

* * *

41032 - In the Matter of the Claim of RAYMOND A. PEPITONE, Respondent.
ROMAINE PIERSON PUBLISHERS, Appellant.
PHILIP ROSS, as Industrial Commissioner, Respondent.

Motion to dismiss appeal denied, without costs and without prejudice to renewal of such motion upon notice to the other parties to the appeal.

* * *

41049 - In the Matter of the Claim of JOAN M. CUMMINGS, Appellant.
PHILIP ROSS, as Industrial Commissioner, Respondent.

Motion for an extension of time to perfect an appeal deemed abandoned pursuant to § 800.12 of the Rules of Practice denied, without costs, and appeal dismissed.

* * *

41050 - In the Matter of the Claim of ANGELA R. GIBSON, Appellant.
PHILIP ROSS, as Industrial Commissioner, Respondent.

Motion to dismiss appeal as untimely taken granted, without costs (see Labor Law, § 624).

MAHONEY, P. J., KANE, CASEY, MIKOLL and WEISS, JJ., concur.

39938 - In the Matter of the Claim of CHARLES H. BIXBY, Appellant.
PHILIP ROSS, as Industrial Commissioner, Respondent.

Motion for permission to appeal to the Court of Appeals denied, without costs.

MAHONEY, P. J., KANE, MAIN, CASEY and WEISS, JJ., concur

Please fill in the underlined spaces in the following form with answers appropriate to your motion. Return one copy to this Court, forward one to the Attorney General or district attorney, whichever is appropriate, and retain one copy.

SUPREME COURT APPELLATE DIVISION
THIRD DEPARTMENT

CHARLES H. BIXBY, Claimant-Appellant

v.

PHILIP ROSS, as Industrial Commissioner

MOTION FOR APPEAL

Case No. 39938

Please take notice, that upon the annexed affidavit, sworn on the 12/31 day of August, 1981, a motion will be made at this Court, on the 31 day of August, 1981, at 1:30 o'clock in the Justice Building thereof, located in the City of Albany, for an order granting (specify relief which you seek) a new hearing in accordance with relief sought and noted in item number 2 below.

Charles H. Bixby
Signed

AFFIDAVIT IN SUPPORT OF MOTION

Supreme Court, Appellate Division, Third Department, Albany, New York

STATE OF NEW YORK, COUNTY OF MONROE :

Charles H. Bixby being duly sworn, deposes and says:

1. I am the claimant-appellant in the above-entitled action. I have appealed to the Appellate Division from a decision of the Supreme Court of Albany County, dated July 2, 1981. (Specify the status of the appeal) An Order of Affirmance was issued dated July 15, 1981

2. By this motion I seek the following relief another hearing should be held in which the rights of the claimant to a fair hearing would be fully respected and legal counsel, appropriate to the facts and the circumstances of the claimant and the totality of the relevant issues raised by this case, would be provided to the claimant.

3. The grounds for the motion and reasons the relief should be granted are: (a) an arbitary and capricious ruling based on inadequate information (b) a denial of due process of law (c) an unconstitutional decision on the basis of both the establishment of religion and the free exercise of religion clauses in the First Amendment (d) a denial of equal protection under the law to the claimant who as an ordained minister is also a citizen (e) an abuse of discretion to deny benefits (f) unjust treatment of claimant and of claimant's case.

Charles H. Bixby
Signed

Sworn to before me this 27 day of Aug., 1981.

Teresa Marie Manley
Notary Public

TERESA MARIE MANLEY
Notary Public, State of New York
Qualified in Monroe County
My Commission Expires March 30, 19__

DECISION

STATE OF NEW YORK

Supreme Court

Appellate Division
Third Judicial Department

JUSTICE BUILDING

ALBANY

HON. A. FRANKLIN MAHONEY

Presiding Justice

HON. MICHAEL E. SWEENEY
HON. T. PAUL KANE
HON. ROBERT G. MAIN
HON. JOHN T. CASEY
HON. ANN T. MIKOLL
HON. PAUL J. YESAWICH, JR.
HON. LEONARD A. WEISS
HON. J. CLARENCE HERLIHY

Associate Justices

JOHN J. O'BRIEN

CLERK

July 2, 1981 NOT FOR PUBLICATION

39927 - In the Matter of the Claim of
WILLIAM T. GUDGEL, Appellant.

PHILIP ROSS, as Industrial
Commissioner, Respondent.

Decision affirmed, without costs. No opinion.

* * *

39938 - In the Matter of the Claim of
CHARLES H. BIXBY, Appellant.

PHILIP ROSS, as Industrial
Commissioner, Respondent.

Decision affirmed, without costs. No opinion.

* * *

39946 - In the Matter of the Claim of
FERNANDO PEREZ, Appellant.

PHILIP ROSS, as Industrial
Commissioner, Respondent.

Decision affirmed, without costs. No opinion.

* * *

39982 - In the Matter of the Claim of
JAMES A. GRIFFIN, Appellant.

PHILIP ROSS, as Industrial
Commissioner, Respondent.

Decision affirmed, without costs. No opinion.

MAHONEY, P.J., KANE, MAIN, CASEY and WEISS, JJ., concur.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE APPEAL BOARD
TWO WORLD TRADE CENTER
NEW YORK, N. Y. 10047

LOUIS SITKIN
Chairman
James R. Rhone
G. Douglas Pugh
Arthur A. Strauss
Sam Kovenetsky

MEMBERS

SEYMOUR P. HAVE
Executive Secretary

Charles Bixby
5489 W. Henrietta Rd.
W. Henrietta, NY 14586

S.S.A. # 485-28-0791 Appeal # 302,109

A.L.J. # 47904206

NYS Dep't of Labor
Local Office #51
111 Clinton Ave. No.
Rochester, NY 14604

PLEASE TAKE NOTICE that the decision set forth below was mailed and filed in the Department of Labor on MAR 12 1980

Fairport Baptist Home
4646 Nine Mile Point Rd.
Fairport, NY 14450

PLEASE TAKE FURTHER NOTICE that within thirty days after the mailing of this decision, the Commissioner or any other party affected thereby who appeared at the appeal before the Board may appeal questions of law involved in such decision to the Appellate Division of the Supreme Court, Third Department. Written notice of such appeal should be mailed to the Unemployment Insurance Appeal Board, Two World Trade Center, New York, N.Y. 10047 within the time above stated.

DECISION OF THE BOARD

PRESENT: Arthur A. Strauss, James R. Rhone

Members

The claimant appeals from the decision of the Administrative Law Judge filed December 5, 1979 sustaining the initial determination of the local office holding the claimant ineligible to receive benefits effective October 1, 1979 because he did not file a valid original claim in that his earnings in his base perio were in employment excluded under the Unemployment Insurance Law.

Hearing was held before the Administrative Law Judge at which all parties were accorded a full opportunity to be heard and at which the claimant, a representative of and a witness for the employer, and a representative of the Industrial Commissioner appeared and testimony was taken. The Board considered the arguments contained in claimant's written statements submitted on appeal.

After a review of the record including testimony and evidence adduced before the Administrative Law Judge and due deliberation having been had thereon, and having found that the Administrative Law Judge's findings of fact and opinion are fully supported by the record, and that no errors of fact or law appear to have been made, the Board adopts the findings of fact and the opinion of the Administrative Law Judge as the findings of fact and opinion of the Board.

DECISION: The decision of the Administrative Law Judge is affirmed.

ARTHUR A. STRAUSS, Member

JAMES R. RHONE, Member

MJ:KC

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE ADMINISTRATIVE LAW JUDGE SECTION

SENIOR ADMINISTRATIVE LAW JUDGES
UPSTATE OFFICES
HYMAN NELSON
PERETZ Z MILLER
ROBERT L WEDLAKE
SENIOR ADMINISTRATIVE LAW JUDGES

IRVING J TROW
CHIEF ADMINISTRATIVE LAW JUDGE

155 West Main Street
Rochester, New York 14614

DECISION AND NOTICE OF DECISION

In the Matter of:

Charles H. Bixby
5489 W. Henrietta Road
W. Henrietta, New York 14586

A.L.J. No. 479-04206 R

S.S.A. No. 485-28-0791

DECISION MAILED AND DULY FILED IN THE DEPARTMENT OF LABOR ON DEC 5 1979

Local Office # 51
Department of Labor
111 N. Clinton Avenue
Rochester, New York 14604

Fairport Baptist Home
4646 Nine Mile Pt. Road
Fairport, New York 14450

FINDINGS OF FACT: A hearing was held at which claimant and representatives of the employer and Industrial Commissioner appeared. Testimony was taken.

Claimant filed an original claim for benefits on October 1, 1979. He thus established a base earnings year from October 2, 1978 to September 30, 1979. Claimant was ruled not to have filed a valid original claim because none of his weeks of employment or earnings could be credited toward his base earnings year.

Claimant, an ordained minister, was last employed as a chaplain by a non-profit, religious organization. The majority of claimant's duties were of a ministerial and pastoral nature.

OPINION: Section 563 of the Unemployment Insurance Law provides that the weeks of employment and earnings of a duly ordained minister in the exercise of his ministry on behalf of a non-profit organization are excluded in the computing of employment and earnings for the purposes of unemployment insurance benefits. Thus, none of claimant's employment or earnings for the employer herein could be credited toward eligibility for unemployment insurance benefits.

DECISION: The initial determination is sustained.

/s/ JAMES MORIARTY
Administrative Law Judge

ra

NOTICE OF DECISION

TO ALL PARTIES: AB 584 B (1-78)

Please take notice that as a result of a hearing before an Unemployment Insurance Administrative Law Judge, the decision herein was made and has been duly filed on the date listed on the face of this decision.

Any party who, for good cause, failed to appear at the hearing, has the right to reopen the case by making application to the local office within a reasonable time and establishing such good cause before the Administrative Law Judge.

IF YOU APPEARED AT THE ADMINISTRATIVE LAW JUDGE'S HEARING AND ARE NOT SATISFIED WITH THE DECISION, YOU MAY APPEAL. SUCH APPEAL MUST BE TAKEN BY YOU WITHIN TWENTY (20) DAYS FROM THE DATE LISTED ON THE FACE OF THIS DECISION.

INSTRUCTIONS TO CLAIMANTS:

IF YOU HAVE ANY QUESTIONS OR DOUBTS ABOUT THE MEANING OF THIS DECISION TAKE IT TO THE LOCAL OFFICE IMMEDIATELY.

Parties are entitled to be represented by attorneys or other persons on appeal before the Appeal Board. For representing you a lawyer may charge a fee which is limited by law. A non-attorney may not charge any fee for representing you. If you do not have enough money to hire a lawyer, you may be able to get one free through your local Legal Aid Society or Legal Services Program.

If you wish to appeal, do the following:

1. Continue to report to your insurance and employment offices on your assigned days as long as you remain unemployed.
2. Within the 20 day period, go to your local office.
3. Take this notice with you.
4. Tell the person in the local office to whom you report that you wish to appeal. Tell him why. Ask him for an appeal form on which you will state your reasons for appeal and which you will sign.
5. If, for any reason, you cannot go to the local office within the 20-day period, you may write a letter to the local office within such period, stating you wish to appeal and giving your reasons.
6. Claimants who appeal are not required to make any money deposit on taking an appeal.

INSTRUCTIONS TO EMPLOYERS:

If you wish to appeal from this decision, you may file a notice of appeal within twenty (20) days from the date listed on the face of this decision with the local office listed on the face of the decision.

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ALL PARTIES WILL RECEIVE A NOTICE OF RECEIPT OF APPEAL DIRECTLY FROM THE APPEAL BOARD AFTER AN APPEAL IS TAKEN.